

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 29, 2007

3:34 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 110

"An Act denying public employee retirement pension benefits to legislators, legislative directors, and public officers and employees who commit certain offenses, and adding to the duties of the Alaska Retirement Management Board and to the list of matters governed by the Administrative Procedure Act concerning that denial."

HEARD AND HELD

SENATE BILL NO. 78

"An Act relating to the installation of window tinting in automobiles."

HEARD AND HELD

SENATE BILL NO. 92

"An Act relating to ignition interlock requirements; relating to limited driver's license privileges for persons convicted of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and requiring certain persons to utilize ignition interlock devices to qualify for a limited driver's license; relating to probation for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, and refusal to submit to a chemical test; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 110

SHORT TITLE: PUBLIC PENSION FORFEITURE FOR BRIBERY ETC

SPONSOR(s): SENATOR(s) THERRIAULT

03/07/07 (S) READ THE FIRST TIME - REFERRALS
03/07/07 (S) JUD, STA, FIN
03/29/07 (S) JUD AT 3:30 PM BUTROVICH 205

BILL: SB 78

SHORT TITLE: MOTOR VEHICLE WINDOW TINTING

SPONSOR(s): SENATOR(s) FRENCH

02/09/07 (S) READ THE FIRST TIME - REFERRALS
02/09/07 (S) TRA, JUD
03/06/07 (H) TRA AT 1:30 PM CAPITOL 17
03/06/07 (S) Moved SB 78 Out of Committee
03/06/07 (S) MINUTE(TRA)
03/07/07 (S) TRA RPT 1DP 3NR
03/07/07 (S) DP: KOOKESH
03/07/07 (S) NR: WIELECHOWSKI, WILKEN, COWDERY
03/14/07 (S) JUD AT 1:30 PM BELTZ 211
03/14/07 (S) Heard & Held
03/14/07 (S) MINUTE(JUD)
03/22/07 (S) JUD AT 3:30 PM BUTROVICH 205
03/22/07 (S) Heard & Held
03/22/07 (S) MINUTE(JUD)

WITNESS REGISTER

Kathy Lea, Retirement Manager
Division of Retirement & Benefits
Department of Administration
Juneau, AK

POSITION STATEMENT: Answered questions related to SB 110

Daniel Wayne, Attorney
Legislative Legal and Research Services Division
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on the legal opinion he issued regarding provisions in SB 110

Officer Steve Dunn
Anchorage Police Department
Anchorage, AK

POSITION STATEMENT: Spoke in support of SB 78

Lt. Rodney Dial
Alaska State Troopers
Department of Public Safety
Ketchikan, AK

POSITION STATEMENT: Delivered a PowerPoint presentation supporting SB 78

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [3:34:34 PM](#). Present at the call to order were Senator Therriault, Senator Wielechowski, Senator Huggins, and Chair French. Senator McGuire arrived shortly thereafter.

SB 110-PUBLIC PENSION FORFEITURE FOR BRIBERY ETC

[3:35:01 PM](#)

CHAIR FRENCH announced the consideration of SB 110.

SENATOR THERRIAULT, Sponsor, explained that SB 110 would require pension forfeiture for a public officer who had been convicted of a felony crime of public corruption. According to the National Conference of State Legislatures, 13 states have constitutional provisions to deny pension benefits to a public official or legislator who has been convicted of a crime related to execution of his/her public duties. Congress is considering similar legislation. Because the state has a substantial interest in maintaining the public's trust in government, this provision should be considered, he stated. The process would be established through regulation so as to give considerable latitude to the executive.

SENATOR THERRIAULT said that the major constitutional issues that legislative legal highlighted have been addressed. Those include the provision in Article XII, Section 7, which says that state retirement and benefits shall not be diminished; Article I, Section 1, which says equal rights shall be guaranteed; Article I, Section 12, which prohibits cruel and unusual punishment; and Article I, Section 15, which says no conviction shall work corruption of blood or forfeiture of estate.

SENATOR THERRIAULT continued to explain that when a public official is convicted of a federal or state felony crime of bribery, receiving a bribe, perjury, subordination of perjury, scheme to defraud or fraud, the pension that is accrued from the

date of offense forward would be surrendered. He clarified that it's the state contribution that is forfeited and not the individual employee contribution. Furthermore, the felony offense would have to have been committed in connection to the duties of the office and the conviction must be proven beyond a reasonable doubt. The pension benefits accrued prior to the date of the crime are not to be diminished and the benefits that are subject to forfeiture do not include insurance, voluntary wage deductions, supplemental or health benefits, or things such as 401-K rollovers that may have been transferred to the pension.

SENATOR THERRIAULT explained that administration of pension forfeiture would be added to the ARM Board duties. That board would hear appeals of the forfeitures, which would include a due process appeal right. Under the evidence rules in the Administrative Procedures Act, the state would have the burden of proving the case through a preponderance of the evidence. In the event of multiple convictions, the earlier or whichever crime is proven would be the one forfeited. The ARM Board would have the option of paying all or some of the forfeited benefits to a spouse or former spouse after considering a totality of the circumstances. A notice provision is added to all employees that if they are convicted of such a crime they will be subject to this provision. Ex post facto is also addressed by making the provision subject to crimes committed on or after the effective date of the act.

[3:40:41 PM](#)

CHAIR FRENCH questioned who is charged with enforcing the provision.

SENATOR THERRIAULT suggested that the committee consider whether it wants notice to be sent to the ARM Board or another entity after the public official is convicted, which would start the process. He knows of one state where the pension stops when there's an allegation. That might not be allowed or desirable here and he's open to suggestions.

CHAIR FRENCH asked if this affects both the PERS and the SBS accounts.

SENATOR THERRIAULT said it would definitely involve the state contribution to PERS, but there's an issue with regard to whether SBS can be included. "The way the bill operates it's specifically to the PERS account."

CHAIR FRENCH asked what the issue is with respect to SBS.

SENATOR THERRIAULT explained that public employees don't make Social Security contributions under an SBS provision, so incorporating SBS would lead to complications.

CHAIR FRENCH asked if SBS is the state analog to social security.

SENATOR THERRIAULT said that's correct.

SENATOR HUGGINS asked if this would apply to 403(b) under TRS.

SENATOR THERRIAULT noted that his staff indicated it would apply to TRS employees.

CHAIR FRENCH asked if a public officer would contribute to TRS adding that that brings up the issue of the definition of "public officer."

[3:44:57 PM](#)

SENATOR THERRIAULT highlighted the following issues that might be addressed in a CS: 1)the definition of "convicted" requires clarification with regard to when to start the process. 2)the need to affect the service time under the defined benefits plan and allow for direct refund to the employee's contribution during the service time that's no longer valid. 3)the need for clarity regarding the term "dependent" because under the current PERS system the spouse or former spouse has a right but not dependent children. 4)page 2, line 9 after "fraud" there's a suggestion to insert "or offense with similar elements." 5)add a right to appeal by an administrative law judge because it might be less costly. 6)the ARM Board decision may be appealed to the office of administrative hearings. 7)decide whether to use "public officer" or "public official" and whether to add judges or not.

[3:47:20 PM](#)

SENATOR WIELECHOWSKI asked if this would only apply to Tiers I, II, and III.

SENATOR THERRIAULT replied it would also apply to people in the new defined contribution plan in Tier IV. The state's contribution would still be at issue from the point of the bad act, he stated.

SENATOR WIELECHOWSKI questioned whether there might be an equal protection issue comparing the potential forfeiture under Tiers I, II, and III with Tier IV.

SENATOR THERRIAULT said there is an issue in the way the contributions are made, but he isn't sure it's equal protection because you can't take away something the person doesn't have.

[3:48:51 PM](#)

SENATOR MCGUIRE joined the meeting.

KATHY LEA, Retirement Manager, Division of Retirement & Benefits, Department of Administration, said it will be easier to implement this bill under the new defined contribution plan (DCR). Because it's a straight money plan it would be easy to remove the employer contributions from the account. It's a little more difficult under the old defined benefit plan (DB) because the benefits are dependent on the service that's accrued and the salary that's earned rather than the contributions. "Simply removing the employer contributions from the member's account will not change the amount of benefits they receive, it will simply reduce the funding for the benefit," she cautioned.

SENATOR THERRIAULT explained that to bring as much parity as possible the bill would need amendment so that the accrued service days would not accrue to the defined benefit employee. That's the only way to decrease their benefit, he stated.

CHAIR FRENCH asked how it would work for him as a Tier II employee.

MS. LEA explained that he makes a 6.7 percent contribution to the account each pay period and the employer also makes a contribution on his behalf.

CHAIR FRENCH asked if it's the same percentage.

MS. LEA said no; it changes every year due to the actuarial valuation, which is required under the defined benefit plan. Under the DCR plan it's a set amount.

CHAIR FRENCH commented that the DCR contribution looks like the SBS contribution because it's a mathematical addition each month.

MS. LEA said yes.

CHAIR FRENCH added that for the DB plan it's not a set dollar addition each month.

MS. LEA added that for the DB plan the actuarial determined rate is done once a year and the employer pays that rate, which funds benefits for that year and any past service costs that the employer may have incurred. The employer pays that amount each pay period for that particular fiscal year.

3:52:25 PM

SENATOR MCGUIRE asked the sponsor why he chose this fairly complicated approach instead of imposing a monetary penalty for someone who committed a crime of the sort described. If the goal is to send a message and punish someone for abusing their public office then impose a half million dollar penalty. This is just a bit of political rhetoric that looks good but does it really do any good, she asked. There's also the issue of the innocent people who are also entitled to those benefits. What about the innocent wife or husband or children?

SENATOR THERRIAULT said he didn't know if the scope could be narrowed to just the public official you're trying to keep on the straight and narrow.

SENATOR MCGUIRE pointed out that police officers are prohibited from using color of title to their personal benefit or monetary gain. She noted that the committee heard a bill recently that established that if a police officer uses color of title to commit murder then the penalty will be life in prison. That's different than for private citizens, she stated.

SENATOR THERRIAULT compared someone who committed a bad act last week to someone who committed a bad act ten years ago.

SENATOR MCGUIRE said she gets his point and everyone understands what's going on in Alaska politically. Think about it, she said. If you're really trying to get at the person who did the bad act why go through the pension plan when that's often the one thing that will be a family safety-net. Make the bad actor individually responsible, she stated.

SENATOR THERRIAULT said if the half million dollar penalty came out of his joint checking account it wouldn't necessarily be any less burden to his wife and family. He reiterated that thirteen other states have this type of law and Congress is considering federal legislation. Although there is some complexity in setting this up, retirement and benefits has said it can handle

it. He hopes it would be used infrequently, but it would be there to assure the public that public officials will stay on the straight and narrow.

3:57:49 PM

SENATOR McGUIRE asked which section contains provisions that protect innocent family members.

SENATOR THERRIAULT directed attention to Section 5(d), page 2 line 22. He read the section and suggested an amendment to also include former spouse. "We do need to make it clear that the existing spouse or a former spouse may have...a right to that and they would go to the ARM Board to...assert their right," he stated.

SENATOR McGUIRE took issue with paragraph (2) on page 2, lines 29-30, which relates to a dependent or former spouse profiting financially.

SENATOR THERRIAULT said that is one of a list of things that the ARM Board would take into consideration.

SENATOR McGUIRE said that's fair, but she needs a definition for "profited financially."

SENATOR THERRIAULT said the intent is that the board would consider whether the act involved more than just the employee.

SENATOR McGUIRE pointed out that paragraph (1) says that, but paragraph (2) does not.

SENATOR THERRIAULT suggested working with the drafters to clarify a more of a direct link between the two paragraphs.

SENATOR McGUIRE stated that "To the degree that this is your political sound bite, I'll vote for it."

SENATOR THERRIAULT clarified that it is not his intent to wave this bill around. It's existing law in other states and it's not targeted at anybody. It's only prospective.

4:02:05 PM

CHAIR FRENCH noted the lengthy legal opinion Mr. Wayne issued on March 12 and asked him to touch on the four points with respect to constitutionality.

DANIEL WAYNE, Attorney, Legislative Legal and Research Services Division, said item 1 talks about Article XII, sec. 7 of the Constitution of the State of Alaska. SB 110 does diminish accrued benefits, but only after the date of the criminal offense. The argument is that those benefits are tainted by the offense. It comes down to a balancing test and his opinion is that the state's interest in maintaining public trust in government is substantial. With regard to limits on the forfeiture, he believes that when the court applies the balancing test it would favor the state.

Item 2 deals with equal rights, which the constitution guarantees. Noting that the definition of public officers in AS 39.52 is a very large group, he said these people are put in a special class that denies them something that everyone else in a similar circumstance would be allowed to have. That raises the equal protection issue so the court would apply a high level of scrutiny to that. Ultimately he believes the court would favor the state. However, there is an issue with respect to collective bargaining agreements and state employees, he said. If there's an agreement in effect and an employee is covered by it, then he doesn't believe the court would uphold pension forfeiture if it conflicted with the agreement. When a new agreement is negotiated then it would be consistent with the pension forfeiture law and the court would allow it.

[4:07:00 PM](#)

SENATOR WIELECHOWSKI noted the different classes of people and commented that under the current structure two people who commit the same offense could be treated very differently. He asked if he'd looked into the potential for equal protection issues.

MR. WAYNE acknowledged that there are equal protection issues but overall the idea of pension forfeiture creates a situation where there could be very different loss amounts. It's totally unrelated to the degree of misconduct or other things that a court takes into consideration in a criminal case. He opined that there is an imbalance, but it isn't unconstitutional. It's a public policy issue.

[4:09:45 PM](#)

CHAIR FRENCH asked him to touch on cruel and unusual punishment.

MR. WAYNE advised that the court could find that a person's right to a pension is outweighed by the governmental interest that's at stake. This is a civil thing that's not really directly part of the criminal case and I think that the cruel

and unusual punishment prohibition mostly has to do with criminal matters, he stated.

CHAIR FRENCH asked him to comment on point 4, which states that "No conviction shall work corruption of blood or forfeiture of estate."

MR. WAYNE explained that stands for the principle that punishment for a crime shouldn't reach beyond the offender and shouldn't affect the right to property that's been acquired legitimately. The bill addresses that by allowing some or all of the forfeited benefits to be awarded to an innocent party.

[4:11:54 PM](#)

SENATOR HUGGINS asked the sponsor to explain what page 2, line 12 really means.

SENATOR THERRIAULT explained it says that all contributions that are made before the offense that the person was tried and convicted for are not impacted. It's only the state contributions from the date of the bad act forward.

[4:13:04 PM](#)

CHAIR FRENCH announced he would hold SB 110 in committee.

SB 78-MOTOR VEHICLE WINDOW TINTING

[4:14:22 PM](#)

CHAIR FRENCH announced the consideration of SB 78. He reminded members of the amendment made during the last hearing, which reduced the offense from a misdemeanor to an infraction—essentially a traffic ticket. Additional packet information included a supporting letter from the Fairbanks police chief, and three news articles reporting a shooting and two accidents that related to window tinting.

[4:15:25 PM](#)

OFFICER STEVE DUNN, Traffic Unit, Anchorage Police Department, stated that tinting is a huge officer safety concern when approaching a stopped vehicle and he absolutely supports SB 78.

[4:16:52 PM](#)

RODNEY DIAL, Alaska State Troopers., said the troopers support SB 78 and the current window tinting standards in the state. He delivered a PowerPoint presentation giving an overview of state and federal law as well as examples of window tints. He made the following points:

- Current law allows the front window to have a five inch strip of tint on the top of the windshield.
- The front driver and passenger windows must allow 70 percent of the light to pass through the glass, which is in accordance with federal law.
- All rear windows must allow 40 percent light transmittance with exemptions for certain special-use vehicles, which must comply with federal law.

CHAIR FRENCH asked what a special-use vehicle is.

LT. DIAL said those include limousines, SUVs, and pickup trucks.

SENATOR THERRIAULT pointed out that the Subaru station wagon and the Subaru Forrester are practically the same vehicle, but the Forrester is classified as an SUV so it has very different tinting requirements. To a certain extent the rules don't make any sense, he said.

SENATOR WIELECHOWSKI asked Lt. Dial if he knows the rationale for the difference between SUVs and other cars.

LT. DIAL said his understanding is the Alaska law is made to be similar to federal law.

SENATOR HUGGINS asked for an example of a multipurpose vehicle. He asked if it would be like the difference between an Outback and a Forrester.

LT. DIAL said that's our understanding. As enforcement officers, the windows we concentrate on are the ones where the driver is going to be able to see other people and we will be able to see the driver, he stated.

CHAIR FRENCH commented that from an enforcement perspective officers have to be able to tell the difference between an SUV and a passenger car and to know that different rules apply.

LT. DIAL agreed. He continued the PowerPoint presentation and made the following points:

- Federal law doesn't specify light transmission requirements for privately owned vehicles after they're manufacture.
- Federal law regulates commercial vehicles.

- At least 13 other states have similar, or more restrictive laws.
- 90 percent of Canadian provinces have similar or more restrictive laws.
- Most of the United Kingdom has similar or more restrictive laws.
- Five states allow 50 percent light transmittance through the front side windows and 31 states allow a range from 20 percent to 40 percent. Generally the hotter the climate the darker the tint allowed.

LT. DIAL clarified that more restrictive laws means that less tint is allowed. For example New York doesn't allow any tint, which is similar to Alaska law. He continued:

- Driving at night with tinted windows is about the same as driving at night with sunglasses. Sunglasses are regulated by the Food and Drug Administration and on average they must let through at least 40 percent of the visible light.
- A variety of filter colors lets different amounts of light through.
- In a Texas murder case three problems were caused by tinted windows. 1)witnesses had difficulty identifying suspects; 2)when police spotted the suspect vehicle they couldn't determine who was in the car, 3)when an officer tried to get a suspect to exit the car one of the occupants used an assault rifle and shot and killed the officer through the window. Texas allows a fairly heavy tint on the side windows.

CHAIR FRENCH noted that Texas allows about the opposite of what Alaska allows.

LT. DIAL agreed.

SENATOR THERRIAULT pointed out that none of the incidents that have been cited say whether the windows were tinted legally or not.

CHAIR FRENCH said that's true but the point is that it should also be illegal to install that level of tint. The idea behind the bill is that installing the tint is just as against the law as driving the car.

SENATOR THERRIAULT said his constituents in Fairbanks and he certainly don't support blacking out windows. At issue is the level of tinting that should be allowed.

LT. DIAL gave examples of problems related to heavy tinting.

- In Chicago a police officer couldn't see through a tinted window and accidentally shot a passenger holding a cell phone—not a gun.
- Numerous examples of criminals that couldn't be identified because witnesses couldn't see the driver through the tinted window. Hit and run accidents are a big problem.
- Collisions with motor vehicles and pedestrians are blamed on poor visibility due to tinted windows.
- Tinted windows can prevent criminal activity occurring in a vehicle from being identified.
- Heavy tinting can keep motorists from viewing the road ahead when looking through the car in front.
- Night vision can be impaired.

LT. DIAL showed tinting examples ranging from light to heavy limo-tinting. Light tinting severely limits the ability to see into a vehicle and it's virtually impossible to see into a vehicle with medium or heavy tinting, he stated. Low light and night light compounds the problem. He showed examples in Alaska of a stock Ford Explorer with 20 percent rear window tint meaning that 80 percent of the light is blocked; a Dodge Durango with 20 percent tint on the front driver and passenger side windows and 80 percent tint on the back windows; and a Toyota passenger car with illegal tint on the back windows.

[4:30:10 PM](#)

LT. DIAL gave the following reasons not to change the current law:

- Current standard assures that Alaska vehicles comply with tinting laws in most states and Canadian provinces.
- Increased visibility for the driver.
- Increased safety for pedestrians.
- Increased safety for law enforcement officers.
-

LT. DIAL said the Alaska State Troopers support SB 78 because:

- It protects the public from unethical installers who tint windows knowing it is illegal. About 1,000 citations per year are written for this type of offense.
- Holding installers accountable will reduce citations to motorists. Some states require installers to conspicuously post a copy of the state law regarding window tinting and provide a copy in writing.

LT. DIAL offered to demonstrate the tint meter.

[4:31:23 PM](#)

CHAIR FRENCH commented that the statement that you can always wear sunglasses on a sunny day, but you can't take off window tint at night is a worthwhile observation.

SENATOR WIELECHOWSKI asked if it's illegal for an owner to have tinted windows, but it's not illegal for an installer to put illegal window tinting on windows.

LT. DIAL said that is correct.

SENATOR WIELECHOWSKI asked if most of the people that are cited for driving with illegal tinting realize that it's illegal.

LT. DIAL explained that most people claim ignorance and then they get angry. A motorist is given three choices when he/she is cited: 1)take the citation to court; 2)remove the tinting and the ticket will be dismissed; 3)pay a \$150 fine. The problem with the last option is that the motorist is subject to subsequent citations. In 90 percent of the cases the people will try to remove the tinting themselves, but it's generally not successful, he stated.

SENATOR WIELECHOWSKI asked what it costs to install tinting and LT. Dial said he didn't know.

CHAIR FRENCH asked for a demonstration.

LT. DIAL showed the standard issue tint meter and explained that it indicates the amount of light that passes through a piece of glass. It doesn't measure tint. The instrument is calibrated before and after a motorist's window is tested to make sure the meter is accurate, he said. He further pointed out that a representation of what a driver sees when he/she looks out is not a good representation of what it's like to look into a car unless there is interior illumination. When the installers said

that you don't get the full effect of the tinting unless it's installed they were being very honest, he stated.

SENATOR THERRIAULT commented that windshields, other than the five inch strip at the top, can have no tint other than what comes from the manufacturer.

LT. DIAL said according to the Department of Transportation, the windshield needs to have a 70 percent light transmittance.

CHAIR FRENCH asked if the committee hadn't heard that most factory glass is the 70 percent light transmittance standard.

LT. DIAL said that is his experience. In response to questions he advised that the meter for a windshield and for back glass has two parts and is much larger. He didn't know what the meters cost.

LT. DIAL showed a Fairbanks demonstration piece that had a limo-tint that is basically black and a 20 percent tint that's allowed in New Mexico.

SENATOR THERRIAULT commented that his experience is that when an officer approaches a stopped vehicle at night the officer typically uses a flashlight to illuminate the interior. He asked how well that works.

LT. DIAL explained that unless the light is on inside the car the outside light is filtered as it goes in through the window, is reflected on the surface inside, and is reflected back outside. "It's very difficult to see through there and see what's going on in the vehicle," he stated.

[4:41:22 PM](#)

SENATOR WIELECHOWSKI asked if it is his opinion that passing a law allowing darker tinting would place public safety officers at greater risk.

LT. DIAL said yes.

CHAIR FRENCH announced that he would hold SB 78 in committee so that the amendment that was passed at the previous hearing could be incorporated into a committee substitute.

There being no further business to come before the committee, Chair French adjourned the meeting at [4:42:30 PM](#).